

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DANNY BURTON,	)	
Plaintiff,	)	
	)	C.A. No. 13-197 Erie
	)	
v.	)	
	)	
MAXINE OVERTON,	)	
Defendant.	)	

**AMENDED MEMORANDUM OPINION**

This prisoner civil rights action was received by the Clerk of Court on July 5, 2013, and was referred to a United States Magistrate Judge for a report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges. The magistrate judge's report and recommendation, filed on October 21, 2014, recommended that the motion to dismiss [ECF No.15] be granted. Service was made on plaintiff Danny Burton ("Plaintiff") by mail at SCI Forest, where he is incarcerated, and on defendant Maxine Overton. Objections were filed by Plaintiff on February 3, 2015. In the objections he did not directly respond to the magistrate judge's conclusion that his claim was time barred. He noted that his complaint was filed on July 5, 2013, in state court. That filing date, however, is still beyond the applicable two-year statute of limitations. The magistrate judge noted Plaintiff's claims occurred in October 2010. For those claims to be timely he had to file an action before November 2010. See Montanez v. Sec'y Pa. Dep't of Corr., 773 F.3d

472 (3d Cir. 2014). Under those circumstances his claims are time barred. After de novo review of the petition and documents in the case, together with the report and recommendation and objections thereto, the motion to dismiss will be granted with prejudice and an appropriate order will be entered.

Dated: April 2, 2014

/s/ Joy Flowers Conti  
JOY FLOWERS CONTI  
Chief United States District Judge

cc: Susan Paradise Baxter  
U.S. Magistrate Judge  
all parties of record \_\_\_\_\_